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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 539

HOUSE, GROSSMAN, VORHAUS & HEMLEY

and

EDWARD M. GARLOCK,

Petitioners,

v.

HUDSON & MANHATTAN CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

HOUSE, GROSSMAN, VORHAUS & HEMLEY
EDWARD M. GARLOCK
Petitioners
521 Fifth Avenue
New York, N. Y. 10017

September 25, 1964

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners pray a writ of certiorari to review the final order or judgment of the United States Court of Appeals for the Second Circuit which denied their petition for leave to appeal from the order of the United States District Court for the Southern District of New York dated January 17, 1964, and from the opinion of that court dated December 27, 1963 containing its supporting findings of fact and conclusions of law, insofar as they fixed and

awarded petitioners an allowance of $50,000, and otherwise denied their application for an allowance of $250,000, for services rendered in the proceeding in that court for the reorganization of Hudson & Manhattan Railroad Company under Chapter X of the Bankruptcy Act.

OPINIONS BELOW

The opinion of the District Court is reported at 224 F. Supp. 815. A copy is appended, marked Exhibit A (pp. 21-72).

The petition for leave to appeal was deneid without opinion by an order dated March 6, 1964. A copy of that order is appended, marked Exhibit B (p. 73)..

JURISDICTION

The petition for leave to appeal was timely made pursuant to Rule 10(b) of the Rules of the Court of Appeals.

The final order or judgment sought to be reviewed was entered on March 6, 1964.

On April 28, 1964 the Court of Appeals made two orders which denied a petition, pursuant to Rule 25 of its Rules, for rehearing or, in the alternative, for rehearing *en banc*. Copies of those orders, respectively denying rehearing and denying rehearing *en banc* and marked Exhibit C and Exhibit D, are appended (pp. 74, 75).

The petition for rehearing was accompanied by a petition for leave to file it out of time; but the orders of denial did not expressly grant the latter petition. On June 10, 1964 the Court of Appeals made an order which amended its order denying rehearing *nunc pro tunc* by adding: "Petition for leave to file out of time granted." A copy of the amending order is appended, marked Exhibit E (p. 76).

On August 1, 1964 Mr. Justice Harlan made an order extending petitioners' time for filing a petition for a writ of certiorari to and including September 25, 1964.

Jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1).

QUESTIONS PRESENTED

Did the Court of Appeals err, and abuse its discretion, in denying the petition for leave to appeal and thus:

(a) by implication and *sub silentio,* reversing its own prior decisions respecting the criteria governing the determination of allowances in reorganization cases under Chapter X of the Bankruptcy Act, and the related role of the Securities and Exchange Commission (SEC);

(b) similarly approving criteria for such determination which violate the letter and spirit of the applicable statutory provisions;

(c) similarly approving renunciation of judicial authority over agreements for sharing such allowances; and

(d) refusing to consider and resolve issues raised by the petition for leave to appeal which, in the stated view of the SEC, "remaining unreviewed, could well set harmful precedents in the administration of Chapter X proceedings in the future."

STATUTES INVOLVED

Bankruptcy Act §62, 11 USC §102, 66 Stat. 426:

"Expenses of administering estates; unauthorized sharing of fees; withholding allowances.

(c) A custodian, receiver, or trustee or the attorney for any of them, or any other attorney, rendering services in a proceeding under this title or in connection with such proceeding, shall not in any form or guise share or agree to share his compensation for such services with any person not contributing thereto, or share or agree to share in the compensation of any person rendering services in a proceeding under this title or in connection with such proceeding, to which services he has not contributed: *Provided, however,* That an attorney-at-law may share such compensation with a law partner or with a forwarding attorney-at-law, and may share in the compensation of a law partner.

(d) A receiver or trustee or the attorney for any of them, or any other attorney, seeking compensation for services rendered by him in a proceeding under this title or in connection with such proceeding, shall file with the court his petition setting forth the value and extent of the services rendered, the amount requested, and what allowances, if any, have theretofore been made to him. Such petition shall be accompanied by his affidavit stating whether an agreement or understanding exists between the petitioner and any other person for a division of compensation and, if so, the nature and particulars thereof. If satisfied that the petitioner has, in any form or guise, shared or agreed to share his compensation or in the compensation of any other person contrary to the provisions of subdivision (c) of this section, the court shall withhold all compensation from such petitioner."

Bankruptcy Act §102, 11 USC §502, 52 Stat. 833:

"Application of other provisions

The provisions of chapters 1 to 7, inclusive, of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: * * *"

Bankruptcy Act §208, 11 USC §608, 52 Stat. 894:

"Intervention of Securities and Exchange Commission

The Securities and Exchange Commission shall, if requested by the judge, and may, upon its own motion if approved by the judge, file a notice of its appearance in a proceeding under this chapter. Upon the filing of such a notice, the Commission shall be deemed to be a party in interest, with the right to be heard on all matters arising in such proceeding, and shall be deemed to have intervened in respect of all matters in such proceeding with the same force and effect as if a petition for that purpose had been allowed by the judge; but the Commission may not appeal or file any petition for appeal in any such proceeding."

Bankruptcy Act §209, 11 USC §609, 52 Stat. 895:

"Representation in proceedings

Any creditor or stockholder may in a proceeding under this chapter act in person, by an attorney at law, or by a duly authorized agent or committee."

Bankruptcy Act §241, 11 USC §641, 52 Stat. 900:

"Petitioning creditors; court officers; attorneys therefor.

The judge may allow reimbursement for proper costs and expenses incurred by the petitioning creditors and reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in a proceeding under this chapter—

(1) by a referee;

(2) by a special master;

(3) by the trustee and other officers, and the attorneys for any of them;

(4) by the attorney for the debtor; and

(5) by the attorney for the petitioning creditors.

Such compensation of referees and [redacted] shall not be governed by sections 68 and 76 of this title."

Bankruptcy Act §242, 11 USC §642, 52 Stat. 900:

"Representatives and other parties in interest; attorneys therefor.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred in connection with the administration of an estate in a proceeding under this chapter or in connection with a plan approved by the judge, whether or not accepted by creditors and stockholders or finally confirmed by the judge—

(1) by indenture trustees, depositaries, reorganization managers, and committees or representatives of creditors or stockholders;

(2) by any other parties in interest except the Securities and Exchange Commission; and

(3) by the attorneys or agents for any of the foregoing except the Securities and Exchange Commission."

Bankruptcy Act §243, 11 USC §643, 52 Stat. 900:

"Creditors and Stockholders; attorneys therefor.

The judge may allow reasonable compensation for services rendered and reimbursement for proper costs and expenses incurred by creditors and stockholders, and the attorneys for any of them, in connection with the submission by them of suggestions for a plan or of proposals in the form of plans, or in connection with objections by them to the confirmation of a plan, or in connection with the administration of the estate. In fixing any such allowances, the judge shall give consideration only to the services which contributed to the plan confirmed or to the refusal of confirmation of a plan, or which were beneficial in the administration of the estate, and to the proper costs and expenses incidental thereto:"

Bankruptcy Act §247, 11 USC 647, 52 Stat. 901:

"Hearing of applications.

The judge shall fix a time of hearing for the consideration of applications for allowances, of which hearing notice shall be given to the applicants, the trustee, the debtor, the creditors, stockholders, indenture trustees, the Securities and Exchange Commission, and such other persons as the judge may designate, * * *"

Bankruptcy Act §250, 11 USC 650, 52 Stat. 901:

"Appeals.

Appeals may be taken in matters of law or fact from orders making or refusing to make allowances of compensation or reimbursement, and may, in the manner and within the time provided for appeals by this title, be taken to and allowed by the circuit court of appeals independently of other appeals in the proceeding, and shall be summarily heard upon the original papers."

Bankruptcy Act §265, 11 USC 665, 52 Stat. 903:

"Securities and Exchange Commission; notices, information and assistants.

a. In addition to the notices elsewhere expressly provided the Securities and Exchange Commission shall be given notice of all other steps taken in connection with a proceeding under this chapter. * * * The clerk and, in the case of a reference, the referee after such reference, shall forthwith transmit to the Securities and Exchange Commission copies of (1) every petition filed under this chapter (2) the answers thereto, if any; (3) the orders approving or dismissing petitions; (4) the orders appointing trustees or continuing debtors in possession; (5) the orders determining the time within which the claims of creditors may be filed and allowed, and the division of creditors and stockholders into classes according to the nature of their respective claims and stock; (6) the orders approving any plan

or plans, together with copies of such plans; (7) the orders approving alterations or modifications in plans, together with copies of such alterations or modifications; (8) the orders confirming plans, together with copies of such plans; (9) all applications for allowances for compensation and expenses, and the orders making or refusing to make such allowances; (10) the orders adjudging debtors to be solvent or insolvent; (11) the orders directing liquidations of estates or dismissing proceedings; (12) and such other papers filed in the proceedings as the Securities and Exchange Commission may request or which the court may direct be transmitted to it. Copies of the opinions or reports, if any, of the judge, referee, or special master, with respect to the matters enumerated, shall also be transmitted to the Securities and Exchange Commission. * * *"

STATEMENT OF THE CASE

1. The petition for leave to appeal, which is printed in the separate appendix hereto, contains a detailed statement of the facts (App. pp. 3a-14a); and the petition for rehearing, which is also printed in the appendix, contains a shorter statement (App. pp. 59a-62a). The pertinent facts for present purposes are summarized in the following paragraphs.

2. Petitioners were the joint attorneys for the petitioning bondholder creditors who initiated the proceeding in the District Court for the reorganization of Hudson & Manhattan Railroad Company (the Debtor) under Chapter X of the Bankruptcy Act with the filing on August 11, 1954 of an involuntary petition thereunder.

3. An amended Plan of Reorganization of the Debtor was consummated as of December 31, 1961 by an order of the District Court which also directed the filing of applica-

tions for final allowances of compensation and reimbursement.

4. Petitioners filed a preliminary application on May 16, 1962, and a more detailed supplemental application on June 25, 1962, requesting a joint compensation allowance of $250,000, pursuant to §§241, 242 and 243 of the Bankruptcy Act, 11 USC §§641, 642, and 643. The preliminary application referred to an agreement for equal division between petitioners, based on their estimate of respective contributions to total services, and an agreement by petitioners to fairly compensate Warren L. Schnur, Esq. for certain associated services.

5. A copy of the supplemental application, marked Exhibit A, is annexed to the petition for leave to appeal (App. pp. 19a-35a). It shows that petitioners rendered extensive and significant services, from July 1953 through December 1960, in three major areas: in preparing and sustaining the involuntary petition; in important administrative matters; and in the paramount reorganization process of plan formulation, plan submission and plan hearings.

6. Judge Walsh presided in the case from its inception until the end of 1957. Judge Dawson presided thereafter.

7. Hearings on the allowance applications began on June 18, 1962 and ended on January 23, 1963. On December 5 and 6 Richard V. Bandler, Esq., counsel for the SEC, delivered an oral advisory report which reviewed the applicants' services and made the SEC's recommendations. The recommended joint allowance of compensation to petitioners was $100,000; the agreement for equal division between petitioners was approved; an agreement to pay

Mr. Schnur 8% of their joint allowance, subject to judicial approval, was disapproved; and the recommended allowance to him was $1,500, payable out of petitioners' joint allowance.

8. A copy of the directly related part of the SEC's advisory report, marked Exhibit B, is annexed to the petition for leave to appeal (App. pp. 36a-38a).

9. At the final allowance hearing on January 23, 1963 there was further discussion of petitioners' services and compensation by Mr. Bandler and the District Judge. A copy of that discussion, marked Exhibit C, is annexed to the petition for leave to appeal (App. pp. 39a-47a).

10. The SEC's recommended allowance to petitioners was the highest of all its recommended allowances to counsel in this case, except only general counsel for the Reorganized Trustee.

11. The Reorganized Company, the respondent, was represented at the allowance hearings by special counsel who filed a printed memorandum which stated their recommendations "in the exercise of our independent judgment." They recommended an allowance to petitioners of $25,000.

12. On December 27, 1963 Judge Dawson filed an opinion fixing and awarding final allowances, and stating his supporting findings of fact and conclusions of law. The opinion, and the order entered thereon, awarded petitioners a joint allowance of $50,000.* The portion directly concerned with petitioners' services and compensation appears at pages 48-51.

* The order is printed in the appendix at pages 53a-57a.

13. The petition for leave to appeal contains a detailed analysis of the opinion's relevant findings of fact and conclusions of law (App. pp. 8a-13a). The findings and conclusions with which this petition is concerned are set forth in the following subparagraphs:

(a) The District Judge dismissed the firm's services with the comment that "Mr. Hemley, a member of the firm, attempted to assist Mr. Garlock." This finding, in effect that the firm's services were perfunctory and negligible, is in direct conflict with the SEC's finding that the firm "did render substantial services." (App. p. 38a).

(b) He found that petitioners' services after approval of the involuntary petition "were not of substantial importance" and that none of those services "resulted in any substantial value to the estate." This finding is in direct conflict with the SEC's findings that "apart from these services (*i.e.*, petitioners' services respecting the involuntary petition) during the course of the proceeding counsel was one of the representatives of the refunding mortgage bondholders during the various hearings that took place, and a vigorous representative", and that such subsequent services were "significant" and "very important" (App. pp. 37a, 42a-43a).

(c) He found that those subsequent services duplicated "to a substantial extent" the services of other representatives of the Refunding Mortgage Bondholders, although virtually none of them either duplicated services of others or were duplicated by others. The SEC found no such duplication.

(d) He held that, after approval of the involuntary petition, petitioners did not participate as representatives of the Refunding Mortgage Bondholders as a class, but

"only as counsel for the three relatively small holders of refunding mortgage bonds whose interests were also represented by the Indenture Trustee and two committees". And, at the final allowance hearing, he stated that the size of their direct numerical representation was a factor "I have got to take into account" (App. p. 45a).

(e) He distinguished the services of counsel for indenture trustees from those of other bondholder representatives, including petitioners, on the ground that they "were not volunteers in the proceeding" (p. 44), and applied that distinction in fixing allowances.

(f) He held that petitioners' agreement respecting division of their joint allowance, and their agreement with Mr. Schnur, "is not a matter for determination by this Court."

14. The sole reference in the opinion to the considered and repeated views of the SEC was the bare statement that "the SEC recommended a joint fee of $100,000." There was no attempt to support the findings set forth in paragraphs 13(a), (b) and (c); there was no refutation of the services unrelated to approval of the involuntary petition which were summarized in petitioners' supplemental application, reviewed by the SEC, and characterized by it as "significant" and "very important"; there was no statement of reasons for those findings in direct conflict with the SEC's; there was no citation of statutory authority or judicial precedent for the rulings set forth in paragraphs 13(d), (e) and (f); and there was no reference to or discussion of contrary authority and precedent.

15. There was no explanation of the contradiction between the radical departure from the SEC's findings and recommendation respecting petitioners and such statements respecting allowances to others as "The Court believes

that the SEC, which had ample opportunity to appraise the work of this firm, arrives at a figure which is more consonant with the compensation to be allowed in the matter" (p. 48), and "The Court believes that the SEC has properly analyzed the contribution made by this firm to the reorganization and awards it the sum of $50,000" (p. 56).

16. As the petition for leave to appeal shows, the District Court gave decisive weight, in respect of petitioners' services and compensation, to the assertions and recommendation in the memorandum of respondent's special counsel (App. pp. 12a-13a).

17. The recitation of their services in petitioners' verified supplemental application was not challenged in cross-examination at the allowance hearing. No answer to the verified petition for leave to appeal was filed; and all its statements of fact, in particular those relating to the proof in the record respecting the extent and importance of petitioners' services, stood admitted before the Court of Appeals.

18. Petitioners sought leave to appeal from the allowance order and opinion pursuant to §250 of the Bankruptcy Act (11 USC §650) and Rule 10(b) of the Rules of the Court of Appeals, insofar as they fixed and awarded petitioners an allowance of $50,000 and otherwise denied their application for an allowance of $250,000.

19. The petition for leave to appeal assigned twelve errors of law and nine errors of fact (App. pp. 14a-16a). The petition for rehearing urged that the District Judge erred and abused his discretion:

(a) in making the findings set forth in paragraphs 13(a), 9(b) and 9(c);

(b) in failing to explain the conflict between those findings and the SEC's, and his extraordinary departure from the SEC's recommendation;

(c) in holding that, after approval of the involuntary petition, petitioners did not represent the class to which their immediate clients belonged, and that the class, including those clients, was represented by others;

(d) in treating the numerical size of petitioners' direct representation as a relevant factor in determining their compensation;

(e) in distinguishing them from counsel for indenture trustees on the ground that they were, and such counsel were not volunteers, and in determining their compensation on a different and less favorable basis for that reason; and

(f) in holding that the division agreements between petitioners, and between them and Mr. Schnur, were not subject to judicial review.

20. The SEC submitted a memorandum to the Court of Appeals respecting the several applications for leave to appeal from the allowance opinion and order below. It supported petitioners' application on three grounds:

(a) that "the district court apparently did not appreciate that these applicants made very substantial contributions to the proceedings in addition to their efforts in obtaining approval of the involuntary Chapter X petition";

(b) that "Sections 241, 242 and 243 of Chapter X of the Bankruptcy Act . . . do not use as a criterion for measuring the amount of compensation either the size of

the representation or, apart from duplication of services, that there may be other representatives of the same class", citing *Surface Transit, Inc.* v. *Saxe, Bacon & O'Shea,* 266 F. 2d 862 (CA 2, 1959); and

(c) that "the district court erred as a matter of law in failing separately to allocate the fee to Schnur", citing §§62(c) and (d) of the Bankruptcy Act, 11 U. S. C. §§102(c) and (d), and *Surface Transit, supra,* at p. 866.*

21. These views were repeated in a letter to the firm from General Counsel for the SEC dated March 23, 1964. It is printed in the appendix at pages 71a-72a. Its concluding paragraph reads:

> "It was our view that the district court's resolution of these issues, remaining unreviewed, *could well set harmful precedents in the administration of Chapter X proceedings in the future.* We are still of the same view and thus, should the Court of Appeals give consideration to your petition for rehearing, we shall present our more definite views on the issues above set forth." (emphasis added).

REASONS FOR GRANTING THE WRIT.

1.

In denying the petition for leave to appeal without opinion the Court of Appeals held, in effect, that the assignments of error set forth in paragraph 19 lack substantial merit. Thus, by implication and *sub silentio,* it rejected and undermined the authority of its own decisions in prior cases including: *Finn* v. *Childs Co.,* 181 F. 2d 431, 437-8, which recognized "the 'very undesirable subjectivity with

* The pertinent portion of the SEC's memorandum is printed in the appendix at pages 74a-75a.

variations according to the particular judge under particular circumstances' which has made the fixing of fees seem often to be 'upon nothing more than an *ipse dixit* basis' ", and established the rule in the second circuit that a district judge must explain a substantial departure from an SEC recommendation; *Ruskin* v. *Griffiths*, 269 F. 2d 827, 835, which recently quoted a pertinent passage in *Childs* with approval; *Berner* v. *Equitable Office Bldg. Corporation*, 175 F. 2d 218, 220, which held that "it is the rule in any reorganization under Chapter X that, whenever anyone undertakes to act on behalf of any part of a class, he becomes the representative of the whole class, and may not deal for any part of it alone"; *In Re Porto Rican American Tobacco Co.*, 117 F. 2d 599, 601, which held that beneficial services constitute the sole criterion for compensation under §§241, 242 and 243; and *Surface Transit, supra*, 266 F. 2d 862, which, in its awards to Mr. Garlock, plainly implied that the size of his direct numerical representation was irrelevant, and expressly held that an agreement to divide compensation in a Chapter X case is subject to judicial review.*

2.

The decision below also tacitly repudiated the rulings in *Childs* and *Surface Transit* that, apart from duplication

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* Judge Dimock's allowance opinion in the Third Avenue case said (Appendix to the appellants' brief in *Surface Transit*, pp. 49-50):

> "Furthermore, if the agreement is to be interpreted as the firm contends, it assigns to one attorney an amount which cannot be considered as compensation for services rendered and thereby results in an unlawful splitting of the fee. Bankruptcy Act §62(e), 11 U. S. C. §102(e); Canon 34, Canons of Professional Ethics, New York State Bar Association. . . . It would be a clear evasion of the intent of this section, [§62(e)] if the court were to sanction a fee sharing arrangement whereby an attorney, having performed some services, received an allowance far in excess of that to which his contribution to the estate entitled him."

of service, multiple representation of the same class is irrelevant under §§241, 242 and 243.

3.

The decision implies approval of the distinction drawn by the District Judge between counsel for indenture trustees and other representatives of the same class, and the adverse application of that distinction in determining petitioners' allowance. The distinction is alien to the letter and spirit of §§241, 242 and 243, and cannot be reconciled with *Porto Rican American Tobacco* and *Surface Transit.*

4.

The decision also implies approval of the distinction drawn by the District Judge between petitioners and counsel for the two committees for the same class, and its adverse application in determining petitioners' allowance. This distinction is similarly invalid; it cannot be reconciled with the settled rule of class representation by counsel for any member of the class; and it will inevitably foster multiplicity of committees and unseemly contests of solicitation to enlarge competing claims of paper representation.

5.

In *Childs* the court below criticized the failure of the district judge to discuss the SEC's recommendations, saying (181 F. 2d 431, 438):

> "We are thus left in the dark as to his reasons for rejecting the specific recommendations".

Here, the sole reference to the SEC's recommendation respecting petitioners was the bare statement that "the SEC recommended a joint fee of $100,000." There was no

discussion of the recommendation or the findings on which it was based. Thus the repudiation of *Childs* implicit in the denial of leave to appeal invites a return to the "very undesirable subjectivity" and the "*ipse dixit* basis" the court below there deplored, with resultant and unrestricted powers of reward and punishment for undisclosed and unprovable reasons; and it will discourage the independence of counsel that is peculiarly important in a proceeding dominated by appointees of the district judge.

6.

The court below held, in effect, that the wide disparity between the SEC's recommendation of $100,000 and the District Court's allowance of $50,000 does not constitute a *prima facie* case of abuse of judicial discretion. It is therefore in conflict with *In Re Albert Dickinson Co.*, 104 F. 2d 771, 775 (CA 7, 1939), affirmed *sub nom. Dickinson Industrial Site, Inc.* v. *Cowan*, 309 U. S. 383, which held that an irreconcilable disparity between the amount allowed and the amount claimed constitutes "a case which calls for modification."

7.

It may be doubted that an irreconcilable disparity between the amount allowed and the amount claimed constitutes "a case which calls for modification"; for the amount of a claim motivated by self-interest seems an unsound criterion of comparison. But an irreconcilable disparity between the amount allowed and the amount recommended by the SEC constitutes at least a case for granting leave to appeal, if not for modification as well. For, as the court below said in *Childs* and repeated in *Ruskin:*

> "The figures presented by the SEC are not 'mere casual conjectures,' but are 'recommendations based on closer study than a district judge could ordinarily

give to such matters.' Frank, supra, 18 N. Y. U. L. Q. Rev. 317, 1941. We agree with District Judge Kirkpatrick's apt statement 'that the Commission is about the only wholly disinterested party in the proceeding and that . . . its experience has made it thoroughly familiar with the general attitude of the Courts and the amounts of allowances made in scores of comparable proceedings.' In Re Philadelphia & Reading Coal & Iron Co., D. C. E. D. Pa., 61 F. Supp. 120, 124."

8.

The decision below will inevitably diminish the authority and prestige of the SEC in the proper exercise of its statutory function in Chapter X cases.

9.

Apart from the question of general reviewability of fee-sharing agreements in Chapter X cases, petitioners' agreement with Mr. Schnur raises a special question because it involves the payment of a forwarding fee which is not based on or measured by contributory and beneficial services. §62(c), 11 U. S. C. §102(c), permits the sharing of compensation in a Chapter I case "with a forwarding attorney-at-law; and §102, 11 U. S. C. §502, makes §62(c) applicable insofar as it is not inconsistent or in conflict with the provisions of Chapter X. The question was therefore expressly presented below whether the exception of §62(c) in favor of a forwarding lawyer is consistent with §§241, 242 and 243 of Chapter X, which prescribe compensation on the basis of contributory and beneficial services. The District Court's ruling, that the agreement with Mr. Schnur "is not a matter for determination by this Court," was an affirmative answer; and the denial of leave to appeal implies approval of that answer. The question is one of

substantial importance and first impression. Such a precedent should not be established without a review which would afford the SEC full opportunity to present the "more definitive views" to which it refers in its mentioned letter.

10.

There is widespread confusion and conflict, both within and among the several circuits, respecting the weight which a district judge should accord the findings and recommendations of the SEC in Chapter X allowance matters, and the requirement of a rational explanation of substantial judicial disagreement. The question has special pertinence where, as here, the deciding judge did not preside during the early years of a long proceeding.

11.

The questions presented by this petition have never been considered and decided by this Court.

CONCLUSION.

For the reasons stated above this petition presents federal questions of serious import transcending petitioners' grievances as private litigants. The writ should be granted.

Respectfully submitted,

HOUSE, GROSSMAN, VORHAUS & HEMLEY,
EDWARD M. GARLOCK,
Petitioners,
521 Fifth Avenue,
New York, N. Y. 10017.

September 25, 1964.

EXHIBIT A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER *of* HUDSON & MANHATTAN RAILROAD COMPANY, Debtor.	In Proceedings for the Reorganization of a Corporation pursuant to Chapter X of the Bankruptcy Act No. 90460

OPINION OF JUDGE ARCHIE O. DAWSON ON APPLICATIONS FOR FINAL ALLOWANCES

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Counsel for the Debtor from August 19, 1954 to November 22, 1954

GODFREY GOLDMARK, ESQ.
Of Counsel

OPINION ON FINAL ALLOWANCES

DAWSON, D.-J.:

In this proceeding under Chapter X of the Bankruptcy Act, applications for compensation and allowances have been made pursuant to Sections 241-250 of the Bankruptcy Act, 11 U. S. C. §§641-650. During the course of the proceedings in reorganization various interim allowances have been made which will be referred to hereafter.

The final fees and allowances now requested total $2,441,393.* The Securities and Exchange Commission (hereinafter referred to as the SEC), acting pursuant to Section 247 of the Act, 11 U. S. C. §647, recommended $1,183,200. The reorganized company, the Hudson & Manhattan Company, retained former Judge David W. Peck as special counsel to appear on these applications. The special counsel analyzed the applications for fees and has made his own recommendations with reference thereto. His recommendations aggregate $810,150. As will hereinafter appear, the Court now awards the aggregate sum of $1,162,700.*

The reorganization that has been accomplished was a difficult and successful one. The proceedings were instituted on August 11, 1954 by an involuntary petition filed in this court by three bondholders of the Debtor. The Court authorized the Debtor temporarily to continue the operation of its business. The Debtor moved to dismiss the

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* During the course of the reorganization proceedings, the following interim allowances have been made to various applicants pursuant to orders of the Court:

Herman T. Stichman—$245,000
McGoldrick, Dannett, Horowitz & Golub—$540,000
Lamb, Langan & Blake—$34,300
Roberts & McInnis—$1,250
Morgan Guaranty Trust Company of New York—$7,416.66 (as Trustee under the First Mortgage)
Manufacturers Hanover Trust Company—$6,600
Morgan Guaranty Trust Company of New York—$850.68 (as Trustee under Adjustment Income Mortgage)
Chemical Bank New York Trust Company—$11,875.

involuntary petition on the ground that Section 77 of the Bankruptcy Act should govern the reorganization of the Debtor.

On November 24, 1954, the Court appointed William W. Golub as Receiver of the Debtor and thereafter ruled that Chapter X, and not Section 77, governed the reorganization of the Debtor (126 F. Supp. 359). The Debtor then filed an answer and consent to reorganization in the Chapter X proceeding.

On December 14, 1954, the Court entered an order approving the involuntary petition under Chapter X and appointed Herman T. Stichman as Trustee of the Debtor.

The Debtor was a corporation organized and existing under the laws of New York and New Jersey. It was created in 1906 by the consolidation of three predecessor corporations. In 1954 it was engaged in two types of business activities: the ownership and operation of the Hudson Tubes, an interurban electric railroad; and the ownership and operation of two 22-story office buildings located at 30 and 50 Church Street, known as the Hudson Terminal Buildings and a number of smaller loft buildings that provided light and air protection for the office buildings.

The Hudson Terminal Buildings were constructed in 1907 and 1908, and included five-story annexes erected in 1912. The buildings, at the time of the institution of the reorganization proceedings, were substantially as they had been when originally erected, except for renovation of ground floor lobbies in 1940 and 1941, and partial substitution of alternating current for direct current. They were almost fully rented, mostly at moderate rentals. During 1954 income from the real estate operations was about $3,280,000 and the net real estate operating income was about $1,120,000.

The Debtor's railroad system provided passenger service only, under the Hudson River, between stations in downtown and midtown Manhattan and stations in Jersey City and Hoboken, New Jersey. Pursuant to agreements with the Pennsylvania Railroad Company the Debtor also operated a joint rapid-transit system between Hudson Ter-

minal in Manhattan and Newark, New Jersey. In 1954 the Debtor carried about 37,300,000 passengers; railroad operating revenues were about $7,170,000 and the net rail road operating loss for 1954 was about $316,000, after an accrual of $561,000 for depreciation.

The financial difficulties of the Debtor stemmed from a progressively increasing squeeze on the railroad operations from rising operating expenses and the coincident loss of passengers to publicly-financed vehicular crossings of the Hudson River by bridge and tunnels. For example, in 1927 the Tubes carried 113,000,000 passengers. By 1954 the number of passengers had dropped to approximately 37,300,000. An important cause of this decline was the construction by the Port of New York Authority of tax-free publicly sponsored facilities for crossing the Hudson River (the Holland Tunnel, the Lincoln Tunnel and the George Washington Bridge). This made it possible for persons desiring to cross from New Jersey to New York, and vice versa, to travel by automobile or by bus and thereby drastically reduced the revenues of the Tubes. In the meantime, railroad operating costs, particularly labor costs, had increased tremendously. The Debtor's efforts to increase revenues by increasing fares had been largely frustrated by the competition of buses and private cars.

At the same time the Debtor was unable to provide sufficient funds to modernize its office buildings. By 1954 competition from new buildings constructed or about to be constructed in downtown Manhattan threatened to decrease sharply the Debtor's real estate revenues. No funds were available for urgently needed capital improvements.

The problem that faced the Trustee, his counsel and the Court in the reorganization proceedings was quite different from that which is faced in most Chapter X reorganizations. The problem which faced the Debtor in 1954 was not a problem which could be met by a mere recasting of its capital structure. It obviously was not a problem which could be met by increasing fares because each increase in fares led to a reduction in the amount of passenger travel.

The ultimate fate of the Debtor's railroad was particularly dependent upon the awakening of an understanding

by the public and public officials as to the vital role of the railroad in the future of commuter transportation in New York. It soon became obvious that the railroad would never be a substantial earner as a purely private operation. It was therefore imperative that any reorganization plan be directed toward the possibility that the railroad would either be sold to or condemned by a public agency. The reorganization thus involved not only the usual activities of a trustee and his counsel for a reorganization plan, but also carefully designed steps on other fronts to stimulate public interest so as to make a reality of the potentiality of public assistance or takeover.

In the meantime it became necessary for the Trustee to supervise the actual operation of the railroad properties and the real estate and other numerous matters which came up during the reorganization and which required action.

In February 1955 the Debtor filed a petition for leave to employ engineers at the expense of the estate to appraise the Debtor's property as of August 11, 1954. In March 1955 the Debtor filed a petition for leave to withdraw its amended answer and consent and to file an answer *de novo* omitting the Debtor's consent to reorganization under Chapter X. In April 1955 the Court denied the petitions. Thereafter the Court of Appeals unanimously affirmed the orders denying the petitions. (229 F. 2d 616). Application for a writ of certiorari was denied by the Supreme Court. (351 U. S. 982 (1956)).

The Court found that at the time of filing of the involuntary petition in bankruptcy the Debtor was unable to meet its debts as they matured. (138 F. Supp. 195).

In August 1957 the Trustee's plan of reorganization was filed, and between October 1957 and May 1958 hearings were held on the Trustee's plan and a comprehensive record was made. The plan was then submitted to the Interstate Commerce Commission, the New Jersey Board of Public Utility Commissioners and the Public Service Commission of New York for suggested amendments of or objections to the plan. After a hearing on the statements filed by the regulatory commissions, the Court entered an order in June

1958 finding the Trustee's plan worthy of consideration and submitting it to the SEC for examination and an advisory report.

As a result of conferences held in 1958 among representatives of the three classes of bonds of the Debtor, substantial agreement was reached on the Trustee's plan, with minor modifications. On October 31, 1958, the Trustee filed Amendment No. 1 to the plan, revising it in essential conformity with that agreement. Two additional amendments were proposed on behalf of certain bondholders, making revisions in certain incidental provisions of the plan. In November 1958 the Court found the Trustee's amended plan and the proposed amendments thereto worthy of consideration, and submitted them to the SEC for examination and report in lieu of the plan previously submitted. In December 1958 the SEC filed its report on the Trustee's amended plan and the proposed amendments, concluding that the amended plan was feasible and fair and suggesting one revision which was made therein relating to the selection of the initial directors of the reorganized companies.

On April 28, 1959 the Court entered its opinion and findings of fact and conclusions of law, approving the Trustee's amended plan as fair and equitable and feasible, subject to the filing of an amendment revising the provision for selection of the initial directors (174 F. Supp. 148). The plan was then modified with reference to the provision for the selection of initial directors. On May 1, 1959 the Court approved the Trustee's amended plan as so modified and in June, 1959 the plan was submitted to the creditors and bondholders of the Debtor for their acceptances. Several stockholders of the Debtor appealed from the approval order. In May 1960 the order was unanimously affirmed by the Court of Appeals (278 F. 2d 402).

During the voting on the plan, certain holders of the junior bonds (the adjustment income mortgage bonds) organized a campaign against acceptance of the plan by their class. The plan was accepted by the holders of both classes of senior bonds and by unsecured creditors, but not by the junior bondholders. Thereafter various hearings

were held and conferences arranged among the various groups of bondholders. A proposed Amendment No. 3 was filed by the Trustee as a result of these conferences. Hearings were held on the plan as so amended. The plan was then referred to the SEC which submitted a supplemental report concluding that the plan, as amended, was fair and equitable and feasible and should be approved.

In April 1960 the Court found the plan to be fair and equitable and feasible and entered an order approving it. The plan was accepted by all classes of creditors and security holders affected by it, and was confirmed by the Court in June 1960.

It then became necessary to secure the approval of various regulatory commissions of certain major transactions incident to the consummation of the plan. An application was first made to the Interstate Commerce Commission. In March 1961, Division 4 of that Commission issued a report and order dismissing all but one minor aspect of the Trustee's application on the ground of lack of jurisdiction. If the Interstate Commerce Commission lacked jurisdiction it became necessary to secure the approval of the Public Service Commission of New York and the New Jersey Board. The Public Service Commission approved the transactions. The New Jersey Board dismissed the Trustee's petition for approval without prejudice. The Trustee moved for and secured a rehearing, but no decision had been rendered prior to December 12, 1961, at which time the Trustee withdrew his petition before that Board.

Various labor organizations representing employees of the Debtor filed with the Interstate Commerce Commission, late in March 1961, a petition for reconsideration of the report and order of Division 4. This petition for reconsideration was supported by the Trustee, who filed a memorandum in support of the ICC's jurisdiction. On December 1, 1961 the full Commission handed down a report and order reversing Division 4 on the jurisdictional issue, and approving the transactions covered by the Trustee's application. The plan was thus consummated as of midnight December 31, 1961.

The plan of reorganization was designed to resolve a number of problems of unusual perplexity and to meet the statutory standards of fairness and feasibility. It was considered essential to separate the railroad and real estate businesses of the Debtor into two corporations, and to create corporate and capital structures that would preserve the prior rights of the senior bondholders while protecting the rights of the junior bondholders. Special provisions were required to take into account the possibility of an advantageous sale of the railroad to a public agency.

The plan provided that the Debtor would be converted into a real estate company, and that a new railroad company would be organized as a subsidiary of the real estate company. The real estate company would retain all the assets of the Debtor, except the railroad properties, and would acquire all the common stock to be issued by the railroad company. Its principal assets would be the Hudson Terminal Buildings, including the land on which they are situated, and the stock of the railroad company. Cash and deposits would be retained by the real estate company.

The railroad company's assets would consist substantially of the railroad property of the Debtor, exclusive of any part of the Hudson Terminal Buildings and the land on which they are situated. They would include the materials and supplies and other assets incidental to the operation of the railroad and enough cash deposits and governmental securities to cover its liabilities, to provide working capital and to meet the estimated cash operating losses over a limited period. Its only outstanding securities would be its common stock, all to be acquired and held by the real estate company.

The real estate company's outstanding securities would consist of $10,038,000 principal amount of new bonds and common stock to be issued in two classes: A and B. The new bonds and 590,476 shares of Class A stock would be distributed pro rata to the public holders of the first mortgage bonds and refunding mortgage bonds of the

Debtor. The Class B stock of 58,849 shares would recognize the interest of the junior bondholders in unmortgaged assets of the Debtor and their right to receive the proceeds of any sale of the railroad after satisfaction of the rights of the senior bondholders. The Class B stock was distributed pro rata to the adjustment income mortgage bondholders.

The general unsecured creditors were to be paid in cash at the rate of ten cents per dollar of claims allowed. No provision was made for the stockholders of the Debtor since its assets were insufficient to pay its creditors in full. Approximately 91% of the new common stock would be Class A stock, and approximately 9% would be Class B stock. Both classes would represent the same equity per share in assets and earnings of the real estate company and in the proceeds of any sale of the railroad company property up to $18,500,000. The Class B stock would also have the right initially to share in ninety per cent of the amount realized on the sale of the railroad company's assets in excess of $18,500,000, with the balance going to the Class A stock.

The securities issued and to be issued by the reorganized company have an aggregate current market value as of December 17, 1963 of $34,230,000. During the course of the reorganization, amounts aggregating $3,700,000 were distributed to the holders of the senior securities of the Debtor.

During the time these proceedings were pending the Trustee, assisted by his counsel, had waged an active public relations campaign to convince public officials of New York and New Jersey that a continuance of the commuter transportation service of the Tubes would require public support or takeover by a governmental organization. Initially the Port of New York Authority had been approached to see whether it was interested in taking over the ownership and operation of the Tubes. It refused to consider the proposition. Later it reported that it would not even discuss the matter as long as the Debtor was in reorganization proceedings. However, during the period

of time that the reorganization was before the Court, public sentiment both in New York and New Jersey grew so strong for an assumption by the Port of New York Authority of its responsibility for commuter transportation that the legislatures of New York and New Jersey both passed legislation (as urged by the Trustee) providing for the takeover of the Tubes and the real property of the Debtor by the Port Authority.

On or about July 1, 1962 the Port Authority Trans-Hudson Corporation started condemnation proceedings and as a result of filing of an order granting possession on September 1, 1962, title to the Tubes and substantially all of the real property of the Debtor was acquired by the Port Authority. Proceedings are pending in the Supreme Court of the State of New York to determine the value of these properties in the condemnation proceedings. The Port Authority has indicated that it regards $20,500,000 as being a fair price for the properties. The reorganized company indicates that it believes the condemnation award will be very substantially higher. So far the reorganized companies have received $16,000,000 as an advance payment which was paid to them pursuant to the provisions of New York law governing condemnation by the Port Authority. The Company has ample funds to pay the allowances which are here made by the Court.

The reorganized company has given notice that it intends to call the first mortgage bonds and pay for them out of the proceeds of the advance payment which it has received. This will leave the reorganized company with only the Class A and Class B stock outstanding. How much the holders of those classes of stock will receive will depend upon the final award in the condemnation proceeding.

Thus a situation which at the outset of the proceedings looked as though it would result in a liquidation of the property with little to be received by the creditors, has worked out advantageously. That the creditors expect to receive an excellent return on their investment is indicated by the current market value of the securities. The

Company has been successfully reorganized; its assets are being taken over by a solvent public agency and the full value of those assets will be available to the creditors of the Debtor at a price to be determined in a judicial proceeding. Furthermore, the operation of the interstate rapid transit system has been continued to the advantage of the public and the commuters.

Needless to say, in the course of the reorganization proceedings, numerous groups and attorneys participated. They have filed their applications for allowances. A hearing has been held and briefs have been filed; the Court has examined the record and the briefs. In the course of the hearing the Court was immensely aided by the recommendations of the SEC, which were delivered in an oral report by Mr. Bandler. Representatives of the SEC interviewed the applicants, checked over their hourly statements and their disbursements records and made a constructive series of recommendations. The Special Counsel employed by the reorganized Company for the same purpose have also immensely assisted the Court in making its determination of allowances to be granted. They filed a special, printed report with their recommendations.

The Court has, in accordance with the policy laid down by the courts, given great weight to the recommendations of the SEC as being an independent agency. The Court has allowed the Trustee and counsel for the Trustee slightly more than the amounts recommended by the SEC because it feels that the SEC did not fully evaluate the services rendered by them in stimulating a climate where a takeover by the Port Authority became possible and inevitable. In certain other cases the Court has allowed less than the amounts recommended by the SEC for the reasons set forth in the opinion. Overall total allowances are less than those recommended by the SEC.

The Court is well aware that numerous of the applicants will be disappointed in not receiving their sought-after allowances in full. The fact that the allowance was not granted in full is not a reflection upon either the persons making the application or the work which they did. It is

inherent in the situation that we are here dealing with an insolvent estate and, as the courts have said, "economy of administration" is something which the Court must take into account in granting allowances. In granting allowances in a situation such as this it is impossible to make allowances commensurate with fees which would be received in ordinary matters. Just as some of the creditors of the Debtor had to take some loss, so the attorneys and committees participating in the proceeding cannot be expected to be paid what they would be paid by an ordinary client. The Court has, with full recognition of the necessity for an economy of administration attempted to make the awards on the value of the services rendered to the reorganization. See *Surface Transit, Inc.* v. *Saxe, Bacon & O'Shea,* 266 F. 2d 862, 865 (2d Cir. 1959).

The applications for allowances and the determination of the Court thereon are as follows:

THE TRUSTEE AND COUNSEL TO THE TRUSTEE

Herman T. Stichman

Mr. Stichman acted as Trustee of the Debtor from December 14, 1954 to December 31, 1961. He devoted his full time to the Debtor for a period of somewhat over seven years. He received interim compensation at the rate of $35,000 a year. The Court has taken into account that the Trustee had no overhead expense and that his interim compensation was always assured.

In his capacity as Trustee Mr. Stichman performed three types of services:

(1) He was Chief Executive of the Debtor.

(2) He was the primary moving spirit in the development of the plan of reorganization; and

(3) Recognizing that the ultimate fate of the Debtor was largely a matter of inducing some public authority to take it over in condemnation or by sale, he devoted a considerable part of his activities to

creating a climate of public opinion where this would be possible and in securing the necessary legislation authorizing the Port of New York Authority to take over the Debtor and in persuading the Port Authority and public officials that this was a desirable move.

Mr. Stichman's services as Chief Executive of the Debtor would have warranted compensation not less than the $35,000 he received. As a result of his assuming this position it was unnecessary for the Debtor to have a president or a number of vice-presidents or a confidential aid to the president, all of which had been on the payroll prior to the time Mr. Stichman assumed his duties. The former president of the Debtor drew a salary of $40,000 per annum. By serving as Chief Executive of the Debtor and performing duties previously carried out by a number of paid officials, Mr. Stichman aided in the economical administration of the property of the Debtor. His services, over and above those duties, in connection with the plan of reorganization and in creating a situation where a takeover of the Debtor by a public authority was made possible, are services for which he was not receiving interim compensation. The SEC in its report states, with reference to the latter matter: "It is equally clear that during the course of the proceeding Mr. Stichman's activities did result in keeping the problem alive before the public, and did result in creating the kind of atmosphere and certainly aided in the creation of the kind of atmosphere in which the Port Authority could make the proposal it did." These services are outlined in detail in the application for fees. The Court, which had almost daily contact on the matter, appreciates the skill, ingenuity and persistence with which Mr. Stichman tackled this problem. They are services of a type which involved public relations, a knowledge of the factors which influence governmental authorities and legislative bodies and a skill in securing the proper results from those bodies. The Court is of the opinion that the SEC in appraising the value of Mr. Stichman's services looked at those services in the light of the ordinary services per-

formed by a Trustee in maintaining a Debtor and in promulgating a plan of reorganization, and did not appreciate these other services which Mr. Stichman performed because they are not the type services customarily found in reorganizations. Mr. Stichman has requested a further allowance of $420,000. The counsel for the reorganized Company has recommended that an additional allowance be paid to him of $177,500. The SEC has recommended that an additional allowance be paid to him at this time of $140,000. The Court, after considering all the matters, makes an additional allowance to the Trustee at this time of $200,000. Unpaid disbursements are allowed in the sum of $78.11.

McGoldrick, Dannett, Horowitz & Golub—
Counsel to the Trustee

This firm has acted as counsel for the Trustee since December 14, 1954. As the SEC stated in their report: "Trustee's counsel were involved not only in the reorganization aspects of the Debtor and its affairs, but actually they acted as general counsel for an operating company with two businesses—the real estate business of some magnitude involving two large buildings, and a railroad business running the Hudson Tubes between here and New Jersey."

The firm is a firm with considerable experience in reorganization matters. The SEC report said: "We believe that counsel did competently handle the affairs of this estate." It also said: "In the area of plan promulgation we feel that Trustee's counsel performed the major service . . . we feel that basically the structure of the plan and the working out of its provisions were largely the work of Trustee's counsel." The result of the activities of the Trustee and his counsel was well summarized by the report of the SEC when it stated: "As a result of the very effective preparation for plan hearings, we had in this proceeding probably as clear, as orderly, as expeditious and as complete a hearing on the plan as one could reasonably expect."

Counsel for the Trustee has been receiving annual interim allowances at the rate of $80,000 a year, except for the six months period ending November 30, 1961 when "as a result of the lessening of the amount of time necessarily devoted to this case during the past six months" counsel requested and received $20,000.

In all, the firm received interim allowances of $540,000 for the period from December 14, 1954 through November 30, 1961.

The firm has filed an elaborate petition for allowance, seeking an additional allowance at this time of $810,000. Counsel for the reorganized Company has recommended an additional allowance at this time of $340,000. The SEC has recommended an additional allowance at this time of $560,000.

The application for fees states that the number of hours spent on the matter totals 46,439, of which approximately 60% was partners' time. The Court, after considering all of the facts and the various reports and recommendations makes an allowance at this time of additional compensation of $600,000 to this firm. The Court also makes an allowance for unpaid out-of-pocket disbursements in the sum of $1,125.18.

SPECIAL COUNSEL TO THE TRUSTEE

In the course of the reorganization proceedings it became necessary for the Trustee to engage special counsel in New Jersey and in Washington, D. C. Retention of these special counsel was made pursuant to applications to the Court and approval of the Court. They have now made application for final allowances. The special counsel are:

Lamb, Langan & Blake, of Jersey City, N. J.

This firm was retained pursuant to Order No. 14, dated January 6, 1955. In the order the firm was granted leave to request semi-annual interim allowances for services rendered, not to exceed for each semi-annual period the sum

of $3,000. Pursuant to that authorization this firm filed thirteen interim applications for allowances and has received as aggregate interim payments so far the sum of $34,300.

While the firm expended time and effort in tax litigation and negotiations in connection with the Public Utility Commission, etc., for the most part its services related to the defense of accident claims brought against the Trustee. In their requests for interim allowances they itemized the time spent during the preceding six months' periods and the services rendered during those periods. In six out of the thirteen applications for interim allowances they requested less than the permissible amount of $3,000.

In their present application for fees they set forth that the firm spent 4,294 hours in connection with their activities in behalf of the Trustee. However, the partner who testified admitted that their records were not kept in the customary form and that the hours set forth represent a subsequent estimate of the time spent on the matter, based upon the entries in their office records as to what work had been done. Their estimate of time is broken down roughly as follows: 2,500 hours for senior partners, 1,200 hours for junior partners and 600 hours for associates. However, in the light of the circumstances under which these time records were prepared, it cannot be concluded by the Court that they accurately represent the actual time spent by this firm on the matters to which they refer, and the Court concludes that the time estimates are estimates of "probable" time spent, rather than an accurate statement of the actual time spent.

The SEC recommended that $75,000 be paid to this firm which, deducting the $34,300 already received, would require a payment at this time of $40,700. The Company recommends an aggregate payment to them of $45,000, which would mean an additional payment at this time of $10,700. They seek an aggregate payment of $107,350, or an additional payment at this time of $73,050.

The Court cannot understand why, if the firm was entitled to semi-annual payments of $3,000 for interim

allowances, and if they now feel that the payments which they received were inadequate, they failed to ask for full interim allowances at the times when they could have asked for them.

The Court fixes the final allowance to this firm in the sum of $50,000, of which they have already received $34,300 on account, making a total amount payable to them at this time of $15,700.

An allowance of $321.68 is also made for unpaid disbursements.

Milton, Keane & De Bona, of Jersey City, N. J.

The predecessor of this firm, Milton, McNulty & Augelli, was retained by the Court to act as special counsel for the Trustee in New Jersey, pursuant to Order No. 285 dated December 5, 1958. Unlike Lamb, Langan & Blake, they were engaged on a schedule of charges for particular services and from time to time put in bills for those services, which have been paid. What they seek in this application is additional compensation for other matters in which they acted as special counsel, particularly with reference to activities before the New Jersey Board of Public Utility Commissioners and the New Jersey state courts with respect to fare increases and with respect to steps taken in connection with consummation of the plan of reorganization in so far as approval had to be obtained in New Jersey, and matters of that nature. The services which they rendered are described in the petition. They state they spent 202 hours in these services, almost half of which was associates' time. They seek an allowance at the rate of $30.00 an hour, or the sum of $6,000. The partner of the firm who testified in the proceedings stated that such charge would be a customary one to clients of the firm. However, such test is not one which is applicable in determining allowances in Chapter X reorganizations. See *Finn* v. *Childs Co.*, 181 F. 2d 431, at p. 436 (2d Cir. 1950).

The SEC's report on this application is as follows: "While we believe that the request is on the high side, it

is a small request, and we have no objection to it." Special Counsel for the Company recommended an allowance of $4,000 as "appropriate." The Court does not believe that applications for high allowances should be approved merely because they constitute a "small request." Considering the time spent and the services rendered, the Court approves a fee for these special services of $4,000.

This firm sought reimbursement for disbursements of $160.70. The SEC objected to the inclusion therein of a lunch club bill. No proof was offered thereon by the applicant. The Court therefore disallows so much of the disbursements as include this lunch club bill and approves payment of the balance of disbursements in the sum of $138.66.

Roberts & McInnis, of Washington, D. C.

This Washington firm was retained as special counsel for the Trustee in connection with matters pending before the ICC and other regulatory matters. The Trustee was authorized to retain this firm on February 23, 1955. The firm seeks a final allowance of $6,755, of which $4,255 is for professional services rendered prior to February 22, 1955 and $2,500 is for services since February 23, 1955. Of the latter amount of $2,500, $1,250 has already been received pursuant to Order No. 53 for services since February 23, 1955.

The SEC reports: "In any event, we believe that the services which were performed prior to February 23rd probably had an effect upon the services thereafter, and looking at those alone, and eliminating a good deal of the services which did not seem to have any continuing nature, we believe that an allowance of $4,000 would be appropriate, of which $1,250 has already been paid." Counsel for the Company recommended payment of $1,250, thereby eliminating any payment for services prior to February 23, 1955, even though such services had an effect on the services rendered thereafter.

This firm had special expertise in matters before regulatory commissions in Washington and its services were

necessary for the Trustee. In the light of the foregoing, the Court awards a final allowance to this firm of $3,000, of which $1,250 has been paid, leaving a payment to be made at this time of $1,750. In addition allowance is made of $408.28 for disbursements.

FIRST MORTGAGE BOND REPRESENTATIVES

The Debtor had outstanding in the hands of the public $942,000 face amount of first mortgage bonds. Four representatives of this class, the mortgage Trustee, its counsel, counsel for a committee and counsel for two individual holders of first mortgage bonds, have submitted applications for fees totaling $140,775, or approximately 15% of the face amount of the bonds publicly held. These various applications will now be considered.

Morgan Guaranty Trust Company of New York—Indenture Trustee

As has been stated, the only amount of first mortgage bonds outstanding in the hands of the public was $942,000. However, $66,000,000 of these bonds had been pledged with the Hanover Bank as collateral for the refunding mortgage. This trustee seeks an allowance of $4,458.34 for ordinary administrative services, and $24,400 for special and extraordinary services.

Pursuant to Order No. 202, the Morgan Guaranty Trust Company has been receiving $1,000 annually for its ordinary administrative services. However, apparently it believes it should receive as much as it did prior to the bankruptcy proceedings, which was $1,500, and therefore makes this additional request. The SEC report, with reference to this application for ordinary services, is as follows: "The Commission's view is that the amounts already received by the bank for regular services are amply compensated (sic) for those activities, and we feel particularly enforced in this view in light of the fact that Manufacturers Hanover, which was paid at a similar rate, has not deemed fit to come in and ask for anything further."

It appears that the bank has received in the aggregate $7,416.66 for regular services. It appears further that there was a brief period of time for which it did not receive compensation. The SEC has recommended an additional payment of $500 for this brief period of time. The Court awards as an additional allowance to Morgan Guaranty Trust Company, for its ordinary services, the sum of $500.

The Indenture Trustee also seeks compensation of $24,400 for special and extraordinary services rendered in the course of reorganization. The Court agrees with the comment of the SEC on these services: "We also feel that in great measure the activities of the bank in so far as so-called extraordinary services were concerned, were principally those of its counsel. The bank remained informed, consulted with counsel, and generally moved in that direction through its counsel."

The SEC has recommended that $6,000 would be "an appropriate measure and represent reasonable compensation." Special Counsel for the Company urged that allowances for extraordinary services should not exceed $7,500.

The record and testimony of the trust officer who testified on behalf of this applicant would indicate that a great deal of the work which was done by it was ordinary routine activity. For example, every paper in the proceeding apparently was read by at least two and usually three men in the organization. This would include such things as consideration of a proposed settlement of a tort action. Compensation allowable to an indenture trustee can only be for services beneficial to the administration of the estate. *In re Porto Rican American Tobacco Co.*, 117 F. 2d 599, 601 (2d Cir. 1941). That the services of this Trustee were beneficial to the estate is without doubt, but the extent to which it is entitled to compensation therefor in the sum requested by it may be more doubtful. The Court awards to Morgan Guaranty Trust Company for its extraordinary services the sum of $6,000.

Davis, Polk, Wardwell, Sunderland & Kiendl

This firm acted as counsel for Morgan Guaranty Trust Company throughout the proceeding. It seeks an allowance of $45,000 for these services. Counsel for the Indenture Trustee was active, along with other representatives of the senior bondholders, in urging the rights of the senior bondholders. The application sets forth that 1,452 hours were spent on the matter, of which partners spent 537 hours and the balance was spent by associates. Some of this time undoubtedly involved an overlapping and duplication. It is, of course, true that the Indenture Trustee and its counsel were not volunteers in the proceeding. It was necessary that they keep informed of proceedings and participate therein. For such services they are entitled to be compensated.

The SEC recommends a fee of $27,500; counsel for the Company recommends a fee of $25,000. Having in mind the nature of the work done, the time spent and such contributions as were made by counsel in the course of the reorganization proceedings, the Court accepts the recommendation of the SEC and allows $27,500 to this firm.

This firm requested reimbursement for $144.17. However, certain of the disbursements included amounts for matters of a local nature, such as telephone calls. The SEC has recommended that $96.09 be allowed for disbursements. The Court accepts this recommendation and allows that sum.

Alan V. Lowenstein

Mr. Lowenstein, a member of the firm of Lowenstein & Spicer, acted as counsel for a committee representing the holders of the first mortgage bonds. The committee appeared early in the proceedings and the major effort of the committee and of Mr. Lowenstein in particular was the filing of a petition to declare invalid the pledge of the first mortgage bonds with the Manufacturers Hanover Bank and in effect to assert that the pledged bonds in the hands of the bank would be subordinate to the $942,000 of first mortgage bonds outstanding in the hands of the public.

This issue was finally compromised by agreeing that the first mortgage bonds publicly held would have equal status with the refunding mortgage bonds. The controversy precipitated by this petition was inherent in the situation. The compromise which resulted in the plan was effected by the petition that the committee filed and which it strenuously urged. Mr. Lowenstein claims that he and his associates devoted some 630 hours to the proceeding, most of which were spent by persons considered to be partners of the firm. However, it would appear that most of the work could have been handled by persons other than those in the partner category. Nevertheless, his services contributed to the ultimate determination of the rights of the parties in the litigation and thereby contributed to the ultimate plan of reorganization.

The SEC feels that reasonable compensation for these services would be $10,000; the Company feels that an appropriate fee would be $12,000. The Court accepts the recommendation of the SEC and awards to Mr. Lowenstein the sum of $10,000. It also awards $210.20 for disbursements.

Arthur Miller

Mr. Miller appeared in the proceedings as counsel for his wife and mother-in-law who together held $7,000 face amount of first mortgage bonds. He seeks a fee of $36,000 which it appears would be at a much higher hourly rate than he receives from private clients and is five times the face value of the bonds represented by him. Mr. Miller supported the position taken by Mr. Lowenstein and the bondholders' committee. He appeared at a number of proceedings and participated in a number of conferences which resulted in the compromise as finally worked out in the plan of reorganization. The Court agrees with the conclusion of the SEC that "it is difficult to find particular contributions that Mr. Miller may have made to the proceeding." Undoubtedly he spent a great deal of time attending hearings and conferences and was vigorous in his espousal of the rights of his clients and of the first mortgage bondholders in general.

The SEC has recommended that he be allowed $7,500 as fair and reasonable compensation for his services. The Company urged that he should look to his personal clients for compensation and should receive no allowance from the Court.

The services that Mr. Miller rendered were primarily rendered on behalf of his individual clients, who were his relatives. While, of course, any security holder had a right to be represented in the proceedings, it does not follow that every security holder would have the right to have the fees of his own counsel charged as an expense of the reorganization. If every security holder of the Hudson & Manhattan Railroad Company had hired counsel to appear in the proceedings and if all of them had sought individual fees for appearing in the proceedings, attending hearings and conferences, etc., there would be very little left for the reorganized company. Where individual security holders, or their counsel, appeared in the proceedings, they are entitled to compensation only to the extent that they contributed something of value to the plan or to the administration of the estate. *In re Porto Rican American Tobacco Co.*, 117 F. 2d 599, 601 (2d Cir. 1941). See also *Glasser* v. *Doyle*, 223 F. 2d 811, at p. 813 (2d Cir. 1955).

Since the SEC found it difficult to find any particular contributions that Mr. Miller may have made in the proceedings, and since the Court finds it impossible to discover any particular contribution made to the proceedings by him, the Court sees no basis for allowing him compensation out of the estate. He should look to his personal clients for compensation. The Court therefore declines to award Mr. Miller any allowance payable out of the estate.

REFUNDING MORTGAGE BOND REPRESENTATIVES

Eight separate applications have been filed by the representatives of the refunding mortgage bonds, the total issue of which was $25,009,675. Applications were filed by the Indenture Trustee and its counsel, counsel for three individual bondholders who were petitioning creditors, two

committees and their counsel, and the real estate consultant to one of the committees. The total amount sought for fees by these various representatives is $616,500.

Although Chapter X permits participation by a number of representatives of the same class, allowances may not be made for services which are a duplication of other services. The estate is to be charged "only one fee for a particular service regardless of the number of attorneys involved in performing that service." *Finn* v. *Childs Co.*, 181 F. 2d 431, at p. 436 (2d Cir. 1950). It is on this basis that the Court has fixed the allowances for representatives of this class of security holders. The representatives who have sought these fees are:

Manufacturers Hanover Trust Company

This bank participated in the proceedings as Trustee of the refunding mortgage bond issue. It played a rather active role because it felt that none of the committees representing this issue represented a large enough block of the issue to speak with authority on behalf of the issue as a whole. The SEC properly said: "This indenture trustee, we believe, was vigorous and active throughout the proceeding, through its own efforts, through the efforts of its counsel, in protecting the senior position."

The bank requested an allowance of $25,000. No time sheets were kept, nor was any considered time estimate made. A representative of the bank estimated that they had spent in the neighborhood of 1300 to 1500 hours on the matter, but in view of the fact that no records were kept of the time spent his estimate is not worth a great deal.

Both the SEC and counsel for the Company recognize the services which the bank rendered in the reorganization, as does the Court. Both the SEC and Special Counsel for the Company recommended that the fee allowed to the bank for these services should be $15,000. The Court agrees that this is a proper amount and fixes compensation to the bank, as Trustee of the refunding mortgage bond

issue, at $15,000. It also allows disbursements in the sum of $1,329.

Kelley, Drye, Newhall, Maginnes & Warren

This firm acted as counsel for Manufacturers Hanover Trust Company, as Trustee. It requests an allowance of $86,000, which sum is arrived at by applying the firm's normal charges to the time devoted to this matter by Mr. Heiss and his associates. The firm spent a total of 2,569½ hours, of which a little less than half was partners' time. It requests compensation at the rate of approximately $33.00 an hour. Mr. Heiss, a member of the firm, participated vigorously in the proceedings relative to the reorganization. His advice and counsel were availed of by the Court. The Court agrees with the comment of the SEC when it said: "We believe that the firm acted competently and actively in discharging its duties as counsel to the trustee." It is also true, as the SEC pointed out, that "there was a certain amount of duplication, perhaps necessary duplication, in the firm and with the activities of other representatives of the first mortgage bond."

The SEC recommended $65,000 be paid in compensation to this firm. The Company counsel recommended an allowance of $50,000. The Court believes that the SEC, which had ample opportunity to appraise the work of this firm, arrives at a figure which is more consonant with the compensation to be allowed in the matter. The Court therefore allows the sum of $65,000 to this firm for its services as counsel to the Indenture Trustee.

House, Grossman, Vorhaus & Hemley, and Edward M. Garlock

The firm of House, Grossman, Vorhaus & Hemley, and Mr. Garlock, have filed an application for $250,000 "for a joint allowance . . . as attorneys for the Petitioning Creditors" and for services in connection with the filing of the petition for reorganization.

The record shows that a Mr. Schnur, an attorney whose father owned refunding mortgage bonds, consulted this

law firm as to the feasibility of filing a petition for the reorganization of the Debtor, and they in turn communicated with Mr. Garlock. He took on an assignment to do this work. He made his headquarters in the firm's office, and they supplied the necessary facilities. Mr. Hemley, a member of the firm, attempted to assist Mr. Garlock. They jointly represented three refunding mortgage bondholders whose holdings totaled $46,000 face amount. These three bondholders were the petitioning creditors in the filing of an involuntary petition in bankruptcy. The petition and its filing was a significant achievement in the case. Afterward there was a great deal of effort expended in sustaining the petition, first against the efforts of the Debtor to withdraw its answer to the petition and then in extensive hearings which took place in connection with the answer of the stockholders. Mr. Garlock had the laboring oar in presenting evidence in support of the petition and Judge Walsh ruled that he had sustained the allegation that the Debtor was unable to meet its debts as they matured and again affirmed the initial approval of the petition.

Once the petition had been approved, Mr. Garlock's status as attorney for the petitioning creditors terminated for their role had been performed. Any subsequent participation in the proceedings by Mr. Garlock was only as counsel for the three relatively small holders of refunding mortgage bonds whose interests were also represented by the Indenture Trustee and two committees.

Mr. Garlock apparently has an erroneous impression as to the importance of his status in this proceeding based upon the fact that he had presented the original petition. The Court feels that a differentiation must be made between the services rendered by Mr. Garlock and the firm in filing and sustaining the original petition and the services rendered thereafter on behalf of the three refunding mortgage bondholders. The services rendered after the petition had been sustained were not of substantial importance; nor was Mr. Garlock, apparently, prepared in those appearances which he made in court. Judge Walsh, in one of the hear-

ings, referred to "Mr. Garlock's chronic and consistent lack of preparedness. (Volume 3, p. 1313). Neither Mr. Garlock nor Mr. Hemley kept contemporaneous time records. Mr. Garlock estimated that he spent not less than 4,000 hours in the matter, and Mr. Hemley estimated that he spent six hours for every ten that Mr. Garlock spent. These estimates are not worth very much in the absence of contemporaneous records. The Court agrees with the report of counsel for the Company that "the time estimate is obviously grossly exaggerated." Thus, Mr. Garlock testified that he put in 2500 hours a year in chargeable time and that he never had a holiday and never went away for a week end. His estimate of the time he spent is more a matter of his imagination than it is a statement of fact which can be taken into account by the Court. This does not detract from the services which he rendered in sustaining the petition for involuntary bankruptcy. However the other services he rendered thereafter were services which to a substantial extent duplicated the services of the Trustee of the refunding mortgage bond issue and the other committees representing that issue. None of these services resulted in any substantial value to the estate.

It was testified that there was an agreement between the firm and Mr. Garlock to divide the fee, and also an agreement with Mr. Schnur, an associate of the firm, who was to receive 8% of the fee. Mr. Schnur claimed that he spent 50 hours on the matter. The division of the fee between Mr. Garlock and the firm, and between the firm and Mr. Schnur, is not a matter for determination by this Court. The allowance of a joint fee is a matter for determination by the Court.

The SEC recommended a joint fee of $100,000; Company counsel concluded that "Mr. Garlock and his associates would be well compensated for their contribution in this proceeding by an allowance of $25,000." The Court allows to Mr. Garlock and the firm a joint fee of $50,000. The arrangements between themselves and with Mr. Schnur for the division of the fee is something which they must handle.

Disbursements are requested in the amount of $3,186.03. The disbursements were checked by the SEC which eliminated two items. The SEC recommended payment of disbursements in the sum of $2,378.76. The Court agrees with this recommendation and directs that this amount of disbursements be paid.

Certain notices of lien against any amount owing to Mr. Garlock have been filed by alleged creditors of Mr. Garlock and these liens must be satisfied if payment is made to him.

The Haas Committee

This committee and its counsel entered the proceeding on March 7, 1956, as representatives of the Refunding Mortgage bonds. That class was already represented by a committee and by the Trustee of the issue, but the committee took the view that the refunding bonds "required more active and vigorous representation" and therefore entered into this proceeding.

The inevitable consequence was that counsel for two different committees on behalf of the same class attended the same court hearings, read the same court papers and participated in the same conferences, so that there are now two sets of applications for allowances by different committees and different counsel for the same class. This is in addition to the claim of the Indenture Trustee which took an active part in the proceeding because neither committee represented a large enough block of bonds to speak with authority on behalf of the issue as a whole.

This is a situation where the Court of Appeals has stated, in *Finn* v. *Childs Co.*, *supra*, that while under Chapter X the fact that one committee is already at work will not preclude the subsequent intervention of another, the estate will not be called upon to pay twice or more for the same services.

The committee originally consisted of Ralph H. Haas, the late George J. Wise and the late Lloyd E. Dewey, and appeared in court by its counsel, Mr. Harold P. Seligson

and Mr. Morton E. Yohalem. There is an over-all estimate of 500 hours spent by members of the committee, but no accurate and precise time records were kept. It does not appear that there were any full meetings of the committee but rather consultations either between members of the committee or through counsel.

The participation of this committee in the proceeding, except for the services of its counsel, did nothing constructive. Its counsel did render certain services for which a separate application is made. The committee asks an allowance of $10,000. The SEC recommended an allowance of $3,000; Company counsel recommended an allowance of $1,500. The Court makes an allowance of $2,000 to the members of this committee. The division among the members of the committee is a matter for them to undertake.

Disbursements are allowed in the sum of $827.32.

Harold P. Seligson and Morton E. Yohalem

Mr. Seligson and Mr. Yohalem acted as co-counsel for the Haas Committee and request compensation for services rendered to the committee from March 1956 to the conclusion of the proceedings in 1961. They request an allowance of $115,000. Mr. Yohalem testified that basically this amount is reached by applying a $50 an hour rate to the estimated time devoted to the matter. They estimated that the time spent on the matter was 2,300 hours. However, Mr. Seligson's estimate is a total of 703 hours. Mr. Yohalem's time records had been lost when his secretary died and after her death he did not keep time records in this matter, although he kept time records in other matters. In a Chapter X proceeding compensation is not to be paid to counsel for a committee on the basis of rates charged private clients, and particularly is this true when applicants are counsel for a second committee. The most important criterion is the extent to which the estate benefited as a result of applicants' services. Mr. Yohalem's claim at the hearing, as it was in the petition, was that the plan of reorganization ultimately adopted resulted solely from the

ideas and proposals submitted by counsel for the Haas Committee. This idea cannot be taken seriously. The plan of reorganization was primarily due to the work of the Trustee. The SEC pointed out that the claim of Mr. Yohalem that the Trustee's plan is traceable to suggestions of the Haas Committee "is somewhat extravagant" though it indicates that the proposals of the Haas Committee did have the germ of certain ideas that might have influenced the development of the plan. In the light of these considerations the SEC recommended compensation in the sum of $50,000 to these counsel; the Company recommended an allowance of $30,000. The Court makes an allowance of $40,000.

The SEC which checked the disbursements claimed, recommended that reimbursement be made for disbursements in the sum of $216.00. The Court accepts the recommendation of the SEC and allows disbursements in the sum of $216.00.

The Crockett Committee

The Crockett Committee was the first committee for the refunding mortgage bonds. In December 1954, Keystone Custodian Funds, the holder of $2,347,000 of refunding bonds, had authorized the committee to act for it. The committee consisted of Mr. Crockett, the personal representative of Keystone, a Mr. Knight who was in the security business and Mr. Milner, who is in the real estate business. At one point the committee represented $3,024,000 of refunding bonds. Keystone, however, decided to liquidate its investment and before the end of August 1956 it disposed of holdings of $2,347,000 of refunding bonds. The committee and its counsel continued to participate in the proceeding with drastically reduced representation. When the Court, on December 8, 1959, called upon the participants to set forth the amount of their current representation, the committee listed holders of $194,000 of refunding bonds.

The committee requests an allowance to its members of $12,500. Mr. Crockett attended conferences and submitted affidavits while Keystone was still a bondholder. However

it must be pointed out that he was being paid by Keystone to protect its investment in these bonds. Mr. Milner was in the real estate business and he consulted with counsel for the committee respecting leases the Trustee proposed to enter into, the value of the buildings, etc. He, however, does not seek compensation in his capacity as a member of the committee but has submitted a separate application as "real estate consultant" to the committee. His services are compensable as a member of the committee. There is no reason for giving him an allowance as a member of the committee and also as a real estate consultant. The SEC after reviewing all of the services of this committee said: "We do not believe that the contribution of the committee was very significant, apart from that which may have been the contribution of its counsel, nor do we see that there was any special service that was performed." The SEC recommended that the committee be awarded $3,000. Counsel for the Company also recommended that compensation for all the members of the committee should not exceed $3,000. The Court agrees with these recommendations and fixes an allowance to the members of the committee of $3,000, to be divided among them in such manner as they deem appropriate.

Joseph Milner

Mr. Milner submitted a separate application for an allowance in his capacity as real estate consultant to the Crockett Committee. He seeks an allowance of $25,000. At the request of the committee he made an appraisal of the building and at counsel's request testified about the appraisal at the hearing on the application to sell the building. In major part the $25,000 is sought for the appraisal and the testimony. It should be pointed out that the appraisal was not made at the request of the Trustee nor pursuant to any order of the Court. When the Trustee required the services of a real estate expert the Trustee secured an appraisal by a leading real estate man at a cost to the estate of $7,000.

If Mr. Milner is to be paid by the estate for the appraisal and the testimony he gave, it can only be on a showing that his volunteer services were of benefit to the estate. The SEC recommended an allowance to Mr. Milner of $3,500; the Company's counsel stated that "while Mr. Milner is entitled to compensation as a committee member, his request for a separate allowance for expert services should be denied."

The Court does not find that the appraisal submitted by Mr. Milner was of benefit to the estate. A further appraisal had to be secured by the Trustee from an independent real estate man. See also the opinion of Judge Walsh on Mr. Milner's appraisal, reported at pages 4032-33 of the transcript.

Where a committee member without request by the Court or Trustee voluntarily undertakes to make an appraisal of property he cannot expect to be compensated therefor except to the extent that his services benefited the estate. The Court can find no evidence that Mr. Milner's appraisal benefited the estate. The Court therefore declines to allow any compensation to Mr. Milner for services as a real estate consultant to the Crockett Committee. His services as a member of that committee have already been described and allowance made therefor. He is allowed disbursements of $622.83.

Aranow, Brodsky, Bohlinger, Einhorn & Dann

This firm acted as counsel for the Crockett Committee and appeared in the proceedings in 1955. As has heretofore been pointed out, the initial reason for the activity of the Crockett Committee was its representation of the holdings of Keystone Custodian Funds. When most of these securities were sold out, that reason, and the importance of the committee, disappeared very promptly. However, counsel for the committee did perform certain services in connection with the matter. Mr. Aranow rendered beneficial services in connection with an insurance fund issue involving a claim that approximately $695,000 belonged to the holders of the Adjustment Income bonds.

The principal activity of this firm, however, was in examining, analyzing, sometimes approving and frequently opposing the Trustee's petitions for authority to enter into leases. Mr. Aranow's affidavit notes that there were from seventy-five to one hundred such applications and that he attended at least twenty-one hearings involving such applications. The SEC comments that these counsel participated more than other representatives of the refunding mortgage bonds in matters which affected the Debtor's real estate, "and sometimes in a sense may have overparticipated." It does not appear, however, that the participation in these matters resulted in beneficial services to the estate. These counsel also opposed early programs sponsored by the Trustee for the modernization of the buildings. They participated in connection with the proceedings for promulgation of the plan. The SEC points out that "it cannot be said that any particular or unique contribution was made to the plan" by them.

Counsel, however, prepared certain tax memoranda dealing with various aspects of the plan which were of assistance in connection with resolving some problems in the matter.

The records show that there was an expenditure of 2,000 hours of time, two-thirds of which were attributed to partners, and most of that being time of Mr. Aranow. The firm seeks an allowance of $93,000. This figure was reached by taking partners' time at $50.00 an hour and associates' time at $20.00 an hour. This would be an inappropriate standard for compensable services in a Chapter X proceeding. Furthermore the Court must determine not the amount of time spent but rather the benefit accruing to the estate by the time spent. The SEC recommends an allowance to this firm of $50,000. Company counsel recommends an allowance of $20,000. The Court believes that the SEC has properly analyzed the contribution made by this firm to the reorganization and awards it the sum of $50,000. The SEC checked the claim for disbursements, eliminating some items, and recommended reimbursement for disbursements

in the amount of $581.02. This recommendation is accepted by the Court and this amount is allowed for reimbursement of disbursements.

ADJUSTMENT INCOME MORTGAGE BOND REPRESENTATIVES

The adjustment income mortgage bonds were junior bonds. Twelve separate applications, totaling almost $375,000, have been filed by representatives of these bonds. Again, as with the refunding mortgage bonds, there were two committees and their counsel, and an Indenture Trustee and its counsel, who are claiming fees. When so many counsel appear on behalf of the same class at court hearings and claim compensation for reviewing the same court papers, the estate is not obligated to pay each of them for this inevitable duplication of services. *Finn* v. *Childs Co., supra.* It will be necessary to consider each of these applications separately to see what each applicant contributed to this reorganization.

Morgan Guaranty Trust Company

Morgan Guaranty Trust Company, as well as being trustee under the first mortgage, was a trustee under the adjustment income mortgage. Due to a conflict in interest in representing these two classes of bondholders, it resigned in June 1955 as trustee under the adjustment income mortgage and was succeeded by Chemical Bank New York Trust Company. Morgan Guaranty Trust Company served as trustee for the adjustment income bonds from the beginning of the reorganization to June 9, 1955. By order No. 202 of this Court it received on account of the ordinary administrative services which it rendered in this period the sum of $850.68. It now seeks a further allowance for these services in the sum of $2,530.03. The SEC recommends that for these services it receive the additional sum of $500. Nothing unusual was done by the bank during the period for which it is claiming this compensation. It is

seeking it merely for ordinary administrative services. A total of $1,350.68 would seem to be adequate for these services in that short period of time. The Court therefore allows to Morgan Guaranty Trust Company the additional payment at this time of $500.

Chemical Bank New York Trust Company

This bank was appointed successor trustee of this bond issue on April 21, 1955. It has been paid for its normal administrative services. It now requests an allowance of $15,000 for non-routine services. There is annexed to the petition a schedule of the work done for which compensation is sought. It includes certain items for which, obviously, no compensation is payable, such as, for example, time spent in connection with the substitution of the bank as successor trustee and in connection with resignation of the firm of Cravath, Swaine & Moore as counsel for the bank because of a possible conflict of interest, and in connection with the possibility that the bank might act for the reorganized company.

The bank did not keep any time records and estimated some 500 hours spent in connection with this matter. The SEC reported that it had examined the bank's file and "we do not find, at least from the files, that there is evidence of any special study or any contribution to major matters in the proceeding. Here also we feel that the major service in this area was by counsel for the bank. At most, the services consisted of consultation with counsel and generally keeping abreast of the proceeding."

The SEC recommended an allowance of $3,000 for these services. Counsel for the Company recommended an allowance of $6,000. The Court accepts the recommendation of the SEC and allows the bank $3,000 for its non-routine services.

Cravath, Swaine & Moore

This law firm acted as counsel for Chemical Bank New York Trust Company from April 21, 1955 until February 7,

1957 when it resigned due to a possible conflict of interet and the firm of Proskauer, Rose, Goetz & Mendelsohn was substituted as counsel. The SEC, after examining into this matter, reports that "we do not feel, also, that there was any substantial service that was rendered during this period. We have to bear in mind that this is prior to the stage in the proceedings when the plan was being actively promulgated and when the activities were stepped up. For the most part counsel followed the proceeding, reviewing matters which arose, attending hearings and, in a sense, doing the routine things counsel for an Indenture Trustee would normally do."

The time records of the firm indicate that approximately 555 hours of time were devoted to the matter, of which approximately 100 hours were partners' time. Of this a certain amount of time was devoted to discussions and conferences in connection with the registration of the firm.

The SEC recommended compensation in the sum of $7,500; the firm requested an allowance of $12,500. Counsel for the Company recommended an allowance of $10,000. The Court believes that the allowance recommended by the SEC is proper and allows for the services of this firm the sum of $7,500.

Proskauer, Rose, Goetz & Mendelsohn

This firm acted as counsel for Chemical Bank New York Trust Company in matters relating to the proceeding commencing with February 8, 1957, succeeding the firm of Cravath, Swaine & Moore in the matter. With respect to the plan counsel did assume a fairly active role on behalf of the adjustment income mortgage bonds. It did much to bring the groups of these bondholders together in order to present as much of a united front as possible. As the SEC said, the firm, together with counsel for Manufacturers Trust Company was "instrumental in keeping the conferences going and keeping the parties togethe. nd talking when it appeared that the matter would require litigation to the bitter end. In all, we feel from the time

EXHIBIT C

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

IN THE MATTER

of

HUDSON & MANHATTAN RAILROAD COMPANY,

Debtor.

PETITION FOR REHEARING

HOUSE, GROSSMAN, VORHAUS & HEMLEY, New York, N. Y., and EDWARD M. GARLOCK, petitioners.

Petition for rehearing denied.

S.R.W.
L.P.M.
H.J.F.
U.S.C.JJ.

Apr 28 1964

EXHIBIT D

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

IN THE MATTER

of

HUDSON & MANHATTAN RAILROAD COMPANY,

Debtor.

PETITION FOR REHEARING IN BANC

HOUSE, GROSSMAN, VORHAUS & HEMLEY, New York, N. Y., and EDWARD M. GARLOCK, petitioners.

No active circuit judge having requested that this be reheard *in banc*, the petition is denied.

J. EDWARD LUMBARD
Chief Judge

Apr 28 1964

EXHIBIT E

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

IN THE MATTER

of

HUDSON & MANHATTAN RAILROAD COMPANY,

Debtor.

Before:

WATERMAN, MOORE and FRIENDLY, C.JJ.

PETITION FOR REHEARING

HOUSE, GROSSMAN, VORHAUS & HEMLEY, New York, N. Y., and EDWARD M. GARLOCK, petitioners.

The order of this Court dated April 28, 1964, is hereby amended, *nunc pro tunc*, to read:

Petition for leave to file out of time granted.
Petition for rehearing denied.

SRW
HJF
LPM
U.S.C.JJ.

June 10, 1964.